STATUTES INVOLVED

Labor Management Relations Act, 1947

61 Stat. 156, 29 U.S.C. Sec. 185.

Sec. 301. (a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any District Court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

(b) Any labor organization which represents employees in an industry affecting commerce as defined in this Act and any employer whose activities affect commerce as defined in this Act shall be bound by the acts of its agents. Any such labor organization may sue or be sued as a entity and in behalf of the employees whom it represents in the Courts of the United States. Any money judgment against a labor organization in a District Court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

(c) For the purposes of actions and proceedings by or against labor organizations in the District Courts of the United States, District Courts shall be deemed to have jurisdiction of a labor organization (1) in the District in which such organization mantains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

(d) The service of summons, subpoena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

(e) For the purposes of this section, in determining whether any person is acting as an "agent" of another

person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

* * * * *

NORTH CAROLINA STATUTES

Chapter 1045, Public Laws of 1945; Chapter 1103, Public Laws of 1951

"G.S. 95-36.1—*Declaration of Policy*. It is hereby declared as the public policy of this State that the best interests of the people of the State are served by the prompt settlement of labor disputes; that strikes and lockouts and other forms of industrial strife, regardless of where the merits of the controversy lie, are forces productive ultimately of economic waste; that the interests and rights of the consumers and the people of the State, while not direct parties to such disputes, should always be considered, respected and protected; and, where efforts at amicable settlement have been unsuccessful, that the voluntary arbitration of such disputes will tend to promote permanent industrial peace and the health, welfare, comfort and safety of the people of the State. To carry out such policies, the necessity of the enactment of the provisions of this article is hereby declared as a matter of legislative determination."

"G.S. 95-36.2—*Scope of Article*. The provisions of this article shall apply only to voluntary agreements to arbitrate labor disputes including, but not restricted to, all controversies between employers, employees and their respective bargaining representatives, or any of them, relating to wages, hours, and other conditions of employment."

. . . .

"G.S. 95-36.8—*Enforcement of Arbitration Agreement and Award.* (a) Written agreements to arbitrate labor disputes, including but not restricted to controversies relating to wages, hours and other conditions of employment, shall be valid, enforceable and irrevocable, except upon such grounds as exist in law or equity for the rescission or revocation of any contract, in either of the following cases:

(1) Where there is a provision in a collective bargaining agreement or any other contract, hereinafter made or extended, for the settlement by arbitration of a controversy or controversies thereafter arising between the parties;

(2) Where there is an agreement to submit to arbitration a controversy or controversies already existing between the parties.

(b) Any arbitration award, made pursuant to an agreement of the parties described in subsection (a) of this section and in accordance with this article, shall be final and binding upon the parties to the arbitration proceedings."

* * *

Chapter 94, General Laws of 1927

"G.S. 1-544—*Agreement for Arbitration.* Two or more parties may agree in writing to submit to arbitration, in conformity with the provisions of this article, any controversy existing between them at the time of the agreement to submit. Such an agreement shall be valid and enforceable, and neither party shall have the power to revoke the submission without the consent of the other party or parties to the submission save upon such grounds as exists in law or equity for the rescission or revocation of any contract."

"G.S. 1-558—*Time for Application for confirmation.* At any time within three months after

the award is made, unless the parties shall extend the time in writing, any party to the arbitration may apply to the court for an order confirming the award, and the court shall grant such an order unless the award is vacated, modified, or corrected, as provided in sec. 1-559 and 1-560. Notice in writing of the motion must be served upon the adverse party, or his attorney, five days before the hearing thereof."

"G.S. 1-559—*Order Vacating Award.* In any of the following cases the court shall after notice and hearing make an order vacating the award, upon the application of any party to the arbitration:

(a) Where the award was procured by corruption, fraud or other undue means.

(b) Where there was evident partiality or corruption in the arbitrators, or either of them.

(c) Where the arbitrators were guilty of misconduct, in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior, by which the rights of any party have been prejudiced.

(d) Where the arbitrators exceeded their powers or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

Where an award is vacated and the time, within which the agreement required the award to be made, has not expired, the court may, in its discretion, direct a rehearing by the arbitrators."

"G.S. 1-560—*Order Modifying or Correcting Award.* In any of the following cases the court shall, after notice and hearing make an order modifying or correcting the award, upon the application of any party to the arbitration:

(a) Where there was an evident miscalculation of figures, or an evident mistake in the des-

cription of any person, thing or property, referred to in the award.

(b) Where the arbitrators have awarded upon a matter not submitted to them.

(c) Where the award is imperfect in a matter of form not affecting the merits of the controversy.

The order must modify and correct the award, so as to effect the intent thereof."

"G.S. 1-561. Notice of a motion to vacate, modify or correct an award shall be served upon the adverse party, or his attorney, within three months after an award is filed or delivered, as prescribed by law for service of notice of a motion in an action. For the purpose of the motion any judge who might make an order to stay the proceedings, in an action brought in the same court, may make an order to be served with the notice of motion, staying the proceedings of the adverse party to enforce the award."

"G.S. 1-562. Upon the granting of an order, confirming, modifying, correcting or vacating an award, judgment or decree shall be entered in conformity therewith." . . .

. . . . .

"G.S. 1-564. The judgment or decree so entered (or docketed) shall have the same force and effect in all respects, as, and be subject to all the provisions of law relating to a judgment or decree; and it may be enforced, as if it had been rendered in the court in which it is entered."

. . . . .

"G.S. 1-566. This article shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it."

"G.S. 1-567. This article may be cited as the uniform arbitration act."

* * *

CONSTITUTION OF THE UNITED STATES

Article 3, Section 2

> "Jurisdiction of Courts. The judicial power shall extend to all cases, in law and equity arising under this constitution, the laws of The United States, and treaties made, or which shall be made, under their authority; . . . . between citizens of different states;"

* * * *

Amendment Fifth

> "No person shall . . . be deprived of life, liberty, or property, without due process of law; . . ."

No. 381

JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

CONE MILLS CORPORATION,

Petitioner

v.

TEXTILE WORKERS UNION OF AMERICA,

Respondent

ON PETITION FOR CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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1. There is no conflict with the decisions of this Court.

Petitioner claims that the decision below is in conflict with *Westinghouse*.[1] The decision below is no more in conflict with *Westinghouse* than was *Lincoln Mills*.[2] *Westinghouse* held, in a case without an arbitration clause, that a union could not sue to enforce individual claims under the collective agreement. *Lincoln Mills* held that, despite *Westinghouse*, a union could sue to enforce an arbitration clause, even if individual rights were involved. In this case there was such a clause, with a provision that the award in arbitration should be final and binding. The Fourth Circuit, following *Lincoln Mills*, held that the reasoning of that case applied equally whether compliance with the arbitration clause was sought before or after the arbitrator's award.

[1] *Association of Westinghouse Salaried Employees v. Westinghouse Electric Corp.*, 348 U.S. 437 (1955).

[2] *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448.

"If there is jurisdiction in one case it would seem there should be jurisdiction in the other." (Pet. App. A-7).

Indeed, petitioner seems ultimately to concede that the present case presents no conflict with *Lincoln Mills*, and to argue instead that "confusion and uncertainty" exist because of the assertion of some that the result reached by this Court in *Lincoln Mills* is inconsistent with *Westinghouse*. (Pet. pp. 8-9) That issue was dealt with in *Lincoln Mills*. There is no reason to reargue it.

2. There is no conflict among the Circuits.

The present decision is fully in accord with the only other decision by a Court of Appeals in which the same issue has been squarely presented. *A. L. Kornman Company v. Amalgamated Clothing Workers*, 264 F. 2d 733 (now pending in this Court on petition for certiorari, No. 131, October Term, 1959). The decisions set forth by petitioner as being "probably" in conflict with the decision below are all *Westinghouse* type cases in which Courts of Appeals have refused to take jurisdiction where a union brought suit, not to compel compliance with an arbitration provision, but for direct enforcement of substantive contract provisions regarding employee benefits.

If, as petitioner seems to believe, it can be argued that *Lincoln Mills* overruled *Westinghouse*, then the case in which that question should be settled is one which follows *Westinghouse*, not one which follows *Lincoln Mills*.

3. There is no constitutional question.

(a) The constitutional question under Article III which is adverted to in the *Westinghouse* case and in Mr. Justice Frankfurter's dissent in *Lincoln Mills* is premised on the proposition that Section 301 is jurisdictional only and that the substantive rights to be enforced in an action brought

under it are, therefore, rights arising under and governed by state law. *Lincoln Mills* held squarely that a substantive federal right to compel compliance with an arbitration provision was created by Section 301. Under that construction, Section 301 presents no constitutional problem. The Court of Appeals in this case simply followed *Lincoln Mills*. Hence, there is no constitutional question here under Article III.

(b) Nor is there any denial of equal protection. Petitioner's equal protection argument is based upon the decision of the Sixth Circuit (Judge Stewart dissenting) that a suit to declare an arbitration award invalid would not lie under Section 301 because it is not a suit to enforce the arbitration provision. *Menge1 Co.* v. *Nashville Paper Prod. & Spec. Wkrs. Union*, 221 F. 2d 644 (6th Cir. 1955). Even if it is assumed that the decision in *Menge1* is good law, despite the subsequent decision of this Court in *Lincoln Mills*, the present case creates no inequality between employers and unions. Both have the right, under Section 301, to enforce arbitration awards. The petitioner's argument that this is inequality is based on the unspoken assumption that only employers refuse to abide by arbitration awards and only unions seek to enforce them. Only on that assumption can it be said that the *Menge1* case denies remedies to employers while the present case grants remedies only to unions.

We do not share that assumption. It is not the fact. *Grunwald-Marx Inc.* v. *Los Angeles Joint Board Amalgamated Clothing Workers*, 44 L.R.R.M. 2628 (Calif., Aug. 5, 1959). Even if it were, there would be no denial of equal protection. An employer can raise as a defense in a union's suit to enforce an award every question which might be raised in a suit, like *Menge1*, to set aside an award. Indeed, petitioner has raised just such questions in its defense to this suit and the Court of Appeals directed the District Court to consider those defenses on remand. (Pet. App.

A-8, A-9) Thus petitioner in this very action has asserted a claim, the denial of the opportunity to assert which it says constitutes a denial of equal protection.

CONCLUSION

For the reasons set forth above, the petition for certiorari should be denied.

Respectfully submitted,

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